

**UTILITIES DIVISION[199]**

**Adopted and Filed**

**Rule making related to declaratory orders**

The Utilities Board hereby amends Chapter 4, “Declaratory Orders,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.4, 474.5 and 476.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 17A.9, 476.1 and 546.7.

*Purpose and Summary*

This rule making identifies and updates or eliminates rules that are outdated or inconsistent with statutes and other administrative rules.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 25, 2017, as **ARC 3418C**. On November 14, 2017, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, and the Iowa Communications Alliance (ICA) filed statements on the proposed amendments. OCA stated that it had no objection to the proposed amendments. ICA stated generally that it supports the Board’s efforts to modernize and streamline its rules, and specifically that it supports the proposed amendments to the rules in Chapter 4. No other person filed any statement or comment on the proposed amendments, and no person filed a request for an oral presentation. The Board’s order adopting the amendments can be accessed in the Board’s electronic filing system as Docket No. RMU-2016-0032. One change has been made to the amendments since publication of the Notice. The paragraphs lettered as “a” to “d” in rule 199—4.3(17A) in the Notice are now numbered as “1” to “4.”

*Adoption of Rule Making*

This rule making was adopted by the Utilities Board on January 26, 2018.

*Fiscal Impact*

After analysis and review of this rule making, the Board concludes that the amendments will have no effect on the expenditure of public moneys within the state of Iowa.

*Jobs Impact*

After analysis and review of this rule making, the Board concludes that the amendments will not have a detrimental effect on employment in Iowa.

*Waivers*

Chapter-specific waiver provisions are unnecessary since any person may apply for waiver of any Board rule under 199—1.3(17A,474,476).

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*


This rule making will become effective on March 21, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule 199—4.1(17A) as follows:

**199—4.1(17A) Petition for declaratory order.** Any person may file a petition with the Iowa utilities board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the utilities board, ~~at 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069.~~ Except as otherwise expressly provided in this chapter, the rules of procedure applicable to a petition for a declaratory order shall be those set forth in 199—Chapter 7. Additional requirements applicable to a petition for a declaratory order are established by Iowa Code section 17A.9.

**4.1(1)** ~~The petitioner shall file a petition for a declaratory order with the board in the manner provided by 199—Chapter 14. A petition is deemed filed when it is received by that office the board. The utilities board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board with an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:~~

STATE OF IOWA	
BEFORE THE IOWA STATE UTILITIES BOARD	
IN RE: THE PETITION OF (insert petitioner's name) FOR A DECLARATORY ORDER ON (insert rule number, statute, etc., for which interpretation is sought).	 DOCKET NO. ____ (completed by board) PETITION FOR DECLARATORY ORDER

~~COMES NOW (insert name of petitioner) and requests a declaratory order on (state rule number, statute, order, decision, or other written statement of law or policy of which an interpretation is sought), and in support petitioner states:~~

**4.1(2)** ~~(The petition shall then be dated and signed by, and shall include appropriate contact information for, the petitioner and shall set forth in separately numbered statements the following information (a sample form of a petition for a declaratory order is available at the board's Web site, iub.iowa.gov):)~~

a. The question or questions that petitioner wishes the board to determine, stated clearly and concisely;

1. b. A clear and concise statement of all relevant facts on which the ruling is requested, including the petitioner's interest in the issue;

2. c. A citation to and the relevant language of the specific statutes, rules, policies, decisions, or orders, the that are applicable or whose applicability of which has been questioned, is in question and any other relevant law;

3. The questions petitioner wants answered, stated clearly and concisely.

4. d. The answers to the questions desired by the petitioner The petitioner's proposed answers to the questions raised and a summary of the reasons urged by the petitioner in support of those answers, including a statement of the legal support for the petitioner's position;

~~5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.~~

~~6. e. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity;~~

~~7. f. The names and addresses of other persons, or a description of any class of persons, known by the petitioner to be affected by, or interested in, the questions presented in the petition; and~~

~~8. g. Any request by A statement whether the petitioner for requests a meeting as provided for by rule 199—4.7(17A).~~

~~[The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.]~~

~~WHEREFORE, (insert petitioner's name) prays that the board issue a declaratory order on (insert proposed subject of the requested order).~~

~~Respectfully submitted,~~

~~\_\_\_\_\_  
(Signature of petitioner or representative)~~

~~(Typed or printed name of signer)~~

~~(Address and telephone number)~~

ITEM 2. Rescind and reserve rule **199—4.2(17A)**.

ITEM 3. Amend rule 199—4.3(17A) as follows:

**199—4.3(17A) Intervention.** A person having an interest in the subject matter of a petition for a declaratory order may file with the board a petition for intervention pursuant to rule 199—7.13(17A,476) within 20 days of the filing of a petition for a declaratory order. The board may at its discretion entertain a late-filed petition for intervention. A petition for intervention in a proceeding on a petition for declaratory order shall be dated and signed by, and shall include appropriate contact information for, the petitioner and shall set forth, in addition to the information required by rule 199—7.13(17A,476), the following:

1. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers, including a statement of the legal support for the intervenor's position;

2. A statement indicating whether the intervenor is currently a party to another proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any government entity;

3. The names and addresses of other persons, or a description of any class of persons, known by the intervenor to be affected by, or interested in, the questions presented in the petition; and

4. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

**4.3(1)** Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 14 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

**4.3(2)** Any person who filed a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the utilities board.

**4.3(3)** A petition for intervention shall be filed at 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069. Such a petition shall be deemed filed when it is received by that office. The utilities board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

STATE OF IOWA  
BEFORE THE IOWA STATE UTILITIES BOARD

IN RE: THE PETITION OF  
(insert petitioner's name)  
FOR A DECLARATORY ORDER ON  
(insert rule number, statute, etc., for which  
interpretation is sought).

}

DOCKET NO. \_\_\_\_  
(insert docket number)  
PETITION FOR  
INTERVENTION

~~COMES NOW~~ (insert name of petitioner) ~~and requests intervention in this matter and in support~~  
~~petitioner states:~~

~~(The petition shall then set forth in separately numbered statements:)~~

- ~~1. Facts supporting the intervenor's standing and qualifications for intervention.~~
- ~~2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.~~
- ~~3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.~~
- ~~4. A statement indicating whether the intervenor is currently a party to another proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.~~
- ~~5. The names and addresses of other persons, or a description of any class of persons, known by the intervenor to be affected by, or interested in, the questions presented in the petition.~~
- ~~6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.~~

~~[The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications concerning the petition should be directed.]~~

~~WHEREFORE,~~ (insert intervenor's name) ~~prays that the board grant it intervention and issue a declaratory order on~~ (insert proposed subject of the requested order):

~~Respectfully submitted,~~

\_\_\_\_\_  
(Signature of intervenor or representative)  
(Typed or printed name of signer)  
(Address and telephone number)

ITEM 4. Amend rule 199—4.4(17A) as follows:

**199—4.4(17A) Briefs.** The petitioner or any intervenor may file a brief in support of ~~the~~ that party's position ~~urged~~. The utilities board may ~~request a brief from~~ require that the petitioner; ~~file a brief and may request that~~ any intervenor; or any other person submit a brief concerning the questions raised.

ITEM 5. Rescind and reserve rule **199—4.5(17A)**.

ITEM 6. Amend rule 199—4.6(17A) as follows:

**199—4.6(17A) Service and filing of petitions and other papers documents.**

~~4.6(1) When service required.~~ ~~Except where~~ In a proceeding on a request for a declaratory order, ~~except as otherwise provided by law, every~~ a party shall file with the board a petition for declaratory order, petition for intervention, brief, or ~~any other paper filed in a proceeding for a declaratory order document in the manner provided in rule 199—14.16(17A,476) and shall be served at the same time~~ document in the manner provided in rule 199—14.16(17A,476) and shall be served at the same time serve it, in compliance with the requirements of 199—subrule 7.4(6) and rule 199—14.16(17A,476), upon each of the parties of record to the proceeding and on ~~any persons~~ person who, based upon a reasonable investigation, would be a necessary party to the proceeding under applicable substantive law; ~~simultaneously with their filing. The party filing a document is responsible for service on all parties and other required persons. The party filing a petition shall also file with the board a list of all persons served.~~

~~4.6(2) Filing—when required.~~ All petitions for declaratory orders, petitions for intervention, briefs, or other papers filed in a proceeding for a declaratory order shall be filed with the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the utilities board.

~~4.6(3) Method of service, time of filing, and proof of mailing.~~ Method of service, time of filing, and proof of mailing shall be as provided by 199—subrule 7.6(1).

ITEM 7. Amend rule 199—4.7(17A) as follows:

**199—4.7(17A) Agency consideration Informal meeting.** Upon request by petitioner, the utilities board ~~must will~~ schedule a brief and an informal meeting between the ~~original~~ petitioner, all intervenors, and the utilities board, a member of the utilities board, or a designated member of the staff of the utilities board to discuss the questions ~~raised~~ identified in the petition. The utilities board may solicit comments from any person on the questions raised. ~~Also, comments on the questions raised may be submitted to the utilities board by any person.~~

ITEM 8. Rescind and reserve rule ~~199—4.8(17A)~~.

ITEM 9. Amend rule 199—4.9(17A) as follows:

**199—4.9(17A) Refusal to issue order.**

**4.9(1) Grounds.** The utilities board shall not issue a declaratory order ~~where prohibited by 1998 Iowa Acts, chapter 1202, section 13(1), and that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to determination of the matter in a declaratory order proceeding.~~ The board may refuse to issue a declaratory order on some or all of the questions raised for any of the following reasons:

1. ~~The question does not substantially comply with the required form~~ The petitioner requests the board to determine whether a statute is unconstitutional on its face.

2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the utilities board to issue an order.

3. The utilities board does not have jurisdiction over the questions presented in the petition.

4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.

5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.

9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of the petitioner.

~~10. The petitioner requests the utilities board to determine whether a statute is unconstitutional on its face.~~

**4.9(2) Content and effect of refusal.** ~~A~~ The board's refusal to issue a declaratory order ~~must indicate~~ will include a statement of the specific grounds for the refusal and constitutes final utilities board action on the petition.

**4.9(3) Refusal to issue a declaratory order pursuant to this provision rule** does not preclude the filing of a new petition that seeks to ~~eliminate~~ remedy the grounds for the refusal to issue an order.

ITEM 10. Rescind and reserve rule **199—4.10(17A)**.

ITEM 11. Rescind and reserve rule **199—4.11(17A)**.

ITEM 12. Amend rule 199—4.12(17A) as follows:

**199—4.12(17A) Effect of a declaratory order.** ~~A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is~~ The issuance of a declaratory order constitutes final agency action on the petition. A declaratory order shall be binding on the utilities board, on the petitioner, and on any intervenors who consent to be bound, and is applicable only in circumstances where on any persons who would be necessary parties, who are served pursuant to subrule 4.6(1), and who consent to be bound, in cases in which the relevant facts and the law involved are substantially indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the utilities board. ~~The issuance of a declaratory order constitutes final agency action on the petition.~~

A declaratory order shall be effective upon the date of issuance.

ITEM 13. Amend **199—Chapter 4**, implementation sentence, as follows:

These rules are intended to implement ~~1998 Iowa Acts, chapter 1202, section 13, and Iowa Code section~~ sections 17A.9 and 476.1.

[Filed 1/26/18, effective 3/21/18]

[Published 2/14/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/14/18.